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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,903

03/15/2004

David F. Duncan

VTN-5019

1475

27777 7590 03/09/2007  
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EXAMINER

WEST, PAUL M

ART UNIT

PAPER NUMBER

2856

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/800,903

Applicant(s)

DUNCAN ET AL.

Examiner

Paul M. West

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 January 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12, 14-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 14-17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 January 2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12, 16, 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraim et al.

As to claims 12 and 21, Fraim et al. teach a method for detecting leaks in a sealed package 100 which comprises a closure 105 that is deformable when subjected to an air pressure below atmospheric pressure, the method comprising: loading the package 100 to a chamber 300 that may be opened and closed to allow for loading and unloading (Col. 6, lines 6-7), wherein the chamber 300 when closed can be evacuated or returned to atmospheric pressure (Col. 6, lines 32-34), and wherein the chamber 300

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comprises a plurality of mechanical switches 340,425 that inherently have a head, a tail and a sensor, wherein the head is located a first fixed distance from the deformable closure, and the tail is located a second fixed distance from the sensor when the chamber is closed at atmospheric pressure (see Fig. 3); closing the chamber 300 and reducing the pressure in the chamber 300 to a level below the internal pressure of the package 100 and its contents (Col. 6, lines 31-33); determining whether the mechanical switches 340,425 are open or closed (Col. 6, lines 41-43). Fraim et al. do not specifically point to the method being used to test contact lens packages. However, the apparatus and method of Fraim is disclosed as being used to test any container with a flexible closure sealed to one end, therefore it would have been obvious to one of ordinary skill in the art to use the method taught by Fraim to test contact lens packages because, as Applicant states in the paragraph beginning on page 1, line 21 of the specification, it is common and well-known to test the seals of contact lens packages in order to ensure that bacterial contamination of the contents does not occur.

As to claims 16 and 17, Fraim et al. teach all of the limitations as set forth above but do not mention the amount of time it takes to complete the method. However, it would have been obvious to one of ordinary skill in the art to complete the method in less than 10 seconds, less than 5 seconds, or in any relatively short period of time, because it allows for greater efficiency and productivity in a manufacturing environment.

3. Claims 14, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraim et al. in view of Stauffer et al.

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4. As to claims 14, 19, and 20, Fraim et al. teach all of the limitations as set forth above but do not teach reducing the pressure to -70 kPa, -50 kPa or anywhere in between. Stauffer et al teach reducing the pressure from 0 to about -820 mb or -82 kPa between time  $t_0$  and  $t_1$ , and therefore all the pressures between 0 and -82 kPa which include all the pressures between -50 kPa and -70 kPa. It would have been obvious to use the pressures taught by Stauffer, or any pressures substantially less than the pressure inside the sealed packages, with the method of Fraim because different pressures may be needed depending on the specific types of packages being tested and/or the rigidity of the flexible membrane.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fraim et al. in view of Perhach et al.

As to claim 15, Fraim et al. teach all the limitations as set forth above but do not teach the head of the mechanical switch being spring loaded against the surface of the deformable closure when the chamber is closed under atmospheric pressure. Perhach et al. teach the head 62 of a mechanical switch 69 being spring loaded by means of spring 60 against the surface of a deformable closure 41 in a chamber 25 that is closed under atmospheric pressure (Col. 6, lines 31-34). It would have been obvious to one of ordinary skill in the art to employ the teachings of Perhach with the method and apparatus of Fraim because using a spring loaded head ensures that the head will remain in contact with the deformable closure as the closure moves and thus enables continuous monitoring of the closure's displacement.

### ***Response to Arguments***

5. Applicant's arguments filed 26 January 2007 have been fully considered but they are not persuasive.

6. Applicant has argued that the Fraim reference teaches a method of testing sealed packages which is different from Applicant's. The details of the method disclosed by the Fraim reference may be different from a method which is disclosed in Applicant's specification, but if this is the case, Applicant has not adequately claimed the method in such a way to distinguish over the teachings of Fraim. The Fraim reference teaches all of the limitations in the claims as pointed out above.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul M. West whose telephone number is (571) 272-8590. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Hezron Williams", with a long horizontal flourish extending to the right.

HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800